

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**INTERNATIONAL ALLIANCE OF THEATRICAL &  
STAGE EMPLOYEES & MOTION PICTURE  
TECHNICIANS OF THE UNITED STATES &  
CANADA, LOCAL 84, AFL-CIO  
(Hartford Civic Center)**

**and**

**Case No. 34-CB-2876**

**STEPHEN FOTI, An Individual**

***Patrick Daly, Esq., Hartford, CT,  
for the General Counsel.  
Leon Rosenblatt, Esq., West Hartford, CT,  
for the Respondent.***

**DECISION**

**STEVEN DAVIS, Administrative Law Judge:** Based on a charge and an amended charge filed on July 12, and September 11, 2007, respectively, by Stephen Foti, An Individual, a complaint was issued on September 12, 2007 against International Alliance of Theatrical & Stage Employees & Motion Picture Technicians of the United States & Canada, Local 84, AFL-CIO (Local 84, Union or Respondent) alleging that the Respondent violated Section 8(b)(1)(A) and 8(b)(2) of the Act.

The complaint alleges that:

(a) from about January 12, 2005, the Respondent operated its exclusive hiring hall without the use of objective criteria in referring applicants for employment, and without readily ascertainable rules and procedures that are known to applicants.

(b) from about January 12, 2005 to about May, 2007, the Respondent operated its exclusive hiring hall in a manner that favored employees who were members of the Respondent over employees who were not members of the Respondent.

(c) in about May, 2007, the Respondent implemented rules and procedures governing the operation of its exclusive hiring hall, and

(d) since about May, 2007, the Respondent operated its exclusive hiring hall by:

- i. failing to follow published rules and procedures without proper notice to those utilizing or seeking to utilize the hiring hall.
- ii. failing to properly publicize the rules and procedures to those utilizing or seeking to utilize the hiring hall, and
- iii. failing to use objective criteria in referring applicants for employment.

Before the hearing opened, the Acting Regional Director consolidated this case for hearing with Case Nos. 34-CA-10971 and 34-CB-2774. Those cases involved issues arising from a Compliance Specification which asserted that Foti was owed backpay because he was not referred to employment by the Respondent.

On May 27-29, 2008, a consolidated hearing was held before me in Hartford, Connecticut. Because the issues in each case, the compliance case and this unfair labor practice case are different, involving dissimilar issues and different types of exceptions which may be taken, I have severed them, and accordingly will write separate decisions.<sup>1</sup>

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following:<sup>2</sup>

## **Findings of Fact**

### **I. Jurisdiction**

The complaint alleges and the Respondent denies that SRS, a corporation with a place of business in West Hartford, Connecticut, has been engaged in the business of employing stagehand and other employees who work at various locations within the State of Connecticut, including the Mohegan Sun Casino in Uncasville, Connecticut. In the underlying case in which SRS was the respondent, SRS admitted that it was a statutory employer and the Board so found. *Stagehands Referral Service, LLC*, 347 NLRB 1167, 1171 (2006).

In its answer to this complaint, Respondent Local 84 admitted that during the calendar year 2005, SRS provided services valued in excess of \$50,000 for the Mohegan Sun Casino, an enterprise directly engaged in commerce. Based on the above, and the facts concerning the operation of SRS described below, I find that SRS is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent admits and I find that it is a labor organization within the meaning of Section 2(5) of the Act.

## **II. Alleged Unfair Labor Practices**

### **A. Background**

#### **1. The Operations of the Union and SRS**

Local 84 is a union whose main jurisdiction involves referring stagehand employees to work at various performing and theater venues including the Mohegan Sun Casino (Casino). Stagehands Referral Service LLC (SRS) is a corporation established by Local 84 and located in the Union's office. SRS was created by Local 84 for the sole purpose of supplying stagehands to the Casino because, although the Casino was willing to employ union members, it was unwilling to sign contracts with unions. Thus, although the Casino would not accept referrals of

<sup>1</sup> At the hearing, the parties were advised that I intended to issue two decisions. Tr. 83, 84.

<sup>2</sup> Counsel for the General Counsel submitted a post-hearing exhibit marked as G.C. Exhibit 22. The Respondents have not objected to its admission, and it is hereby received in evidence.

employees from the Union, it would take such referrals from SRS. Accordingly, SRS refers workers to the Casino and sends an invoice to the Casino which the Casino pays, and SRS issues paychecks to the referred employees.

The Union itself, not SRS, refers workers to work at other locations with which it has contacts. It was stipulated that Local 84 has exclusive hiring hall agreements with respect to the referral of stagehands at the Horace Bushnell Memorial Hall, New England Dodge Music Center, Madison Square Garden CT, LLC for a period of time through May, 2007, Northland AEG LLC for a period of time at the Hartford Civic Center, Meadows Music Center, and SRS until April, 2006. See *Stagehands Referral Service, LLC*, 347 NLRB 1167, 1174 (2006).

## 2. The Prior Case

### The Issues and Decision

In *Stagehands Referral Service, LLC*, 347 NLRB 1167 (2006), a complaint was issued against SRS and Local 84. It alleged that SRS, acting as an employer, refused to employ Stephen Foti because he was not a member of Local 84, in violation of Section 8(a)(3) of the Act. It also alleged that Local 84 failed and refused to register Foti for referral and refer him to employment because he was not a member of the Union in violation of Section 8(b)(1)(A) and (2).

The essential facts in that case are as follows: Foti was referred to work at the Casino and other locations. He applied for membership in the Union, and its executive board approved his application. The Union's rules stated that Union members must vote on whether an applicant should be admitted, and at a regular Union membership meeting on May 24, 2004, certain Union members stated that they would vote against Foti because of his poor attitude and attendance at jobs at which they worked. A majority of those voting voted to reject his application for membership. The Union denied him membership because of the vote and refused to refer him to work thereafter because of his nonmembership. However, he was referred to a job six months later in November, and did receive certain referrals thereafter.

Judge Joel Biblowitz dismissed the complaint, finding that there was no evidence that SRS and the Union failed to refer Foti for a prohibited motive. Judge Biblowitz found that Foti was legitimately refused referral because of the Union's interest in referring only high-quality workers.

The Board reversed Judge Biblowitz' decision, holding that the Union and SRS violated the Act by refusing to refer Foti following the membership meeting. The Board reasoned that the Union refused to refer him for "arbitrary and invidious reasons unrelated to any objective standards for referral." It found that the Union had not met its burden of showing that its conduct was necessary for the effective performance of its representational function since other employees were referred despite having worse performance records than Foti. The Board further found that SRS violated the Act because it had actual notice of the Union's discriminatory treatment of Foti.

The Board also found the following:

- a. The Union and SRS had an exclusive hiring hall arrangement.
- b. Union business agent Charles Buckland operates the Union's hiring hall and makes referrals from a three-part list: (a) union

members by seniority (b) wardrobe employees not at issue here and (c) nonmembers (extras), listed alphabetically. Each week Buckland begins at the top of the Union member section, regardless of how far down the list he reached the prior week, and makes referrals. He refers nonmembers only in the absence of available members. If members have equal seniority, Buckland uses his discretion to consider other factors, including "commitment to the union" and performance. No written rules govern hiring hall operations. 347 NLRB at 1167.

At the end of the hearing, the General Counsel moved to amend the complaint to allege that the Union operated an unlawful hiring hall without objective criteria and without readily ascertainable rules and procedures. Judge Biblowitz denied the motion and the Board agreed, finding that the Respondents were not given notice that the entire universe of alleged discriminatees was at issue and not just Foti, or that the operation of the hiring hall had been placed in issue.

Following the close of the hearing, Foti filed the instant charge alleging the unlawful operation of the hiring hall. As set forth above, the complaint in this case expressly alleges that the Union's operation of the hiring hall is unlawful.

### **B. Operation of the Hiring Hall Before January, 2005**

The Union has about 150 members, but only 60 are active, meaning that they are available to be referred. The others who are unavailable work as members of "house crews" as essentially permanent staff members at certain theaters, or those who will not accept certain assignments, for example, to a rock concert, or have left the area, or are retired but have retained their Union membership.

Charles Buckland served as the Union's business agent from November, 2002 to October, 2005, and then from October, 2006 to the present. As business agent he referred people to work. There were no written hiring hall rules before January, 2005.

The first people Buckland referred to work were those who had been designated as "house crew" – about 15 or 20 who worked at certain theaters on a full-time basis. They were the highest on the seniority list or were "hand-picked" by the employer. Such workers may stay on that job for life. When someone left a house crew position, he was replaced. If a contractual provision stated that the employer can choose a replacement, a notice is sent to the Union membership, and resumes are sent to the employer. The employer then selects a replacement. Otherwise, the business agent selects a replacement. Buckland makes an appointment to a house crew with the most important criteria being seniority.

After the house crew was referred, a telephone list was consulted. The list was maintained in the Union office computer but was not posted online. The list consists of names and phone numbers. There are actually three lists, one after the other: The first is comprised of a list of the names of 95 Union members arranged by date of initiation into the Union. However, the list does not state the date of initiation. The second is a list of 23 stagehands who have experience with wardrobe work. The third is an alphabetical list of 274 "extras" or "overhires" – people who are not members of Local 84.

Ninety per cent of the calls were for “stagehands.” But occasionally there were calls for specific, skilled stagehands, such as those with experience in rigging, spotlight, wardrobe, flyrail, curtain, loading, sound, and electrics. In choosing people for those special jobs, Buckland, who stated that based on his “24 years experience as a stagehand, I’m fairly familiar with everyone’s skills and abilities” decides who has such skills. He stated that it was very  
 5 difficult to act democratically, so he made the decision who to refer, supported by suggestions by those familiar with the employees requested, such as shop stewards, and the employer’s heads of departments.

When Buckland received a request for employees, he examined the call list. He began  
 10 began from the top of the first, union member list. He knew that several employees had full time jobs or house crew positions who were not available, and skipped over them. He then called the next person on the list.

The next time Buckland received a request for employees he again began the referrals  
 15 from the top of the first list which contained the names of members of the Union. If, for example, the workers referred on the first day had completed their jobs, which are usually one day positions, the same person might receive a separate, different referral the next day. Thus, Buckland could repeatedly and continually refer the same employees if they were available. If they were not available, he called the next worker on the list. Each time he received a request  
 20 for help, he began from the top of the list.

Under this procedure, the nonmembers or extras would not be referred until the business agent went through the entire list of 95 Union members for each request for workers he received. Buckland stated that he did not know how employees would know their position on  
 25 the list, however he noted that the shop steward at every venue at which the Union had a collective-bargaining contract had the list.

Buckland testified about the procedure used to obtain a place on the call list. He stated that if a stagehand requested referral to a job but had never been referred by the Union,  
 30 Buckland asked him who referred him to the Union and how he obtained the Union’s phone number. Such questions were asked because Buckland had an interest in knowing whether the prospective worker was referred by another member or extra – he stated that a person being referred by a 30 year member is “probably more legitimate” than someone who worked for the Union only one time. Buckland also asked for their experience in the industry and advised them  
 35 to send a resume.

The completed resume was placed in a “new applicant” or “new recruit” file, and when an occasion arises, for example when he receives a call for 200 people, referrals are made as  
 40 follows: Union members; the “extras” list of nonmembers; requests are made to other local unions for workers; new recruit file. Union president Stella Cerullo stated that prior to April, 2005, workers seeking to be referred by the Union learned about the hiring hall rules from senior stagehands and by speaking to board members and co-workers.

Buckland conceded that prior to January, 2005 he did not refer people lawfully. He  
 45 referred workers by seniority in the Union so that Union members were referred first, and then he referred from the “extras,” nonmember list. He stated that he first learned that such a procedure was unlawful at the underlying unfair labor practice trial in April, 2005.

### **C. Operation of the Hiring Hall from April, 2005 to May, 2007**

Beginning in April, 2005, hiring hall rules were prepared and approved several times by the Union's executive board but certain provisions of the rules were rejected by the Union's membership each time.

Buckland testified that when he resumed the position of business agent in October, 2006, he changed the referral system from that in use before April, 2005. First, a new call list was created by the Union's office manager. Records were obtained from every venue that Local 84 sent workers. The names of the workers referred and their first dates of hire were recorded. The date of hire was defined as the worker's first day on the job in any job in the Union's jurisdiction. The list was organized by date of hire – the name of the person having the earliest date of hire was first on the list. If the earliest date found for an employee was his date of initiation, that date was used. Also contained on the list was the employee's phone number. It is an integrated list containing the names of Union members and nonmembers with dates of hire from February, 1971 to December, 2006.<sup>3</sup> There is no way to determine, by looking at the list, who is a Union member and who is not.

Buckland testified that in making referrals from that list he began at the top of the list and made calls until he filled all the available positions for a particular call. When he received a call for workers he started from the top of the list and made the referrals without reference to the employee's union membership. Thereafter, when another call was received, he began again at the top of the list.

Both Buckland and Union president Cerullo testified that, in the period April, 2005 to May, 2007, employees were properly referred in seniority order without regard to union membership, upon the executive board's approval of the hiring hall rules, despite the fact that certain provisions of the rules, unrelated to referrals, were rejected by the membership. However, considerable doubt is cast upon their testimony inasmuch as their pre-trial affidavits, prepared in the presence of Respondent's counsel, stated the opposite. Their affidavits stated that upon the rejection of the rules by the membership, the business agent continued to make referrals "as I did before April, 2005," in which he referred Union members first, as set forth above. Inasmuch as I believe that the pre-trial affidavits, given in the presence of Respondent's counsel nearly one year before the trial, are more trustworthy than their trial testimony on this issue, I will credit the statements set forth in their affidavits on this issue.

Moreover, the call lists in evidence do not support Buckland's testimony. The first call list, dated January 6, 2003 in use through 2005 was separated by members, wardrobe personnel and nonmembers.<sup>4</sup> The second call list, bearing the notation "Fall, 2005" was similarly separated.<sup>5</sup> Only the third list, dated June 8, 2007, was properly integrated with no separations between Union members and nonmembers.<sup>6</sup> Although Buckland testified that a list was prepared in October, 2006 which he used to make proper referrals, no such list was offered in evidence.

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<sup>3</sup> G.C. Exhibit 13.

<sup>4</sup> G.C. Exhibit 11.

<sup>5</sup> G.C. Exhibit 12.

<sup>6</sup> G.C. Exhibit 13.

I accordingly find that Buckland could not have made proper referrals from April, 2005 to May, 2007 by date of hire since no proper, integrated list existed prior to May, 2007. Therefore, the Union's referrals from January, 2005 to May, 2007 were made unlawfully in that Union members were referred prior to those who were not members of the Union.

#### **D. Operation of the Hiring Hall in May, 2007**

In May, 2007, the Union executive board and the membership approved its "Job Referral Rules." It states that "referrals are made on the basis of date of hire, defined as the first day an individual has worked as a stagehand within the Union's geographical jurisdiction, skills/practical experience and availability." The rules state that "a referent is put on one or more lists (wardrobe, projection, and stagehand)" according to the date of hire. In actuality, as Buckland testified, there is one integrated list with no separation by type of work performed. Thereafter, in May, 2007 with the use of the new call list, referrals were made pursuant to that list, with people being properly called in the order of their hiring date without any reference to membership or nonmembership in the Union.

Buckland testified that If he needed workers immediately he called someone who was either close geographically to the venue or someone he knew would respond quickly. This is consistent with the hiring hall rules which state that the "business representative shall call referents at the number provided and shall note on a call record the date and time of the call, whether or not the member answered the telephone or whether a message was left. Referents will have four hours to return a telephone call before the Business Agent goes to the next person on the list, except in cases of emergency. In such cases of emergency, in order to meet its contractual obligations, Local 84 shall have complete discretion to fill such calls with any available out-of-work referents regardless of their position on the job referral lists."<sup>7</sup>

The rules further state that "recognizing that there are times when special technical skills are requested for an employer's needs, it shall be the next individual with those demonstrated skills who will be called first.... When an employer requests a referent having a particular skill (e.g. sound operator, spotlight operator, forklift operator, rigger, wardrobe, etc.) the Local will refer the next qualified person in order of seniority."

The rules state that the referent may be deemed qualified based on demonstrated past experience within a technical area. In addition, the referent may take a test to demonstrate technical skills in each department, and if a passing grade is received, a referent can be deemed qualified.<sup>8</sup> If the referent does not receive a passing grade, he must take a class in that department in order to take the test again. The rules further note that referents receiving their first referral pursuant to the testing procedure shall be on probation on their first five jobs including those deemed qualified by receiving a passing grade. "Head carpenters, stewards, and stage managers from the venue will evaluate the referent's performance on each job and submit a performance evaluation to the R & E Committee. Upon receiving five performance

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<sup>7</sup> Buckland stated that his procedure when calling a worker is different when he refers someone for work within Local 84's jurisdiction and when he receives a call from a business agent from another local. In the latter situation, he is simply doing the other union a favor in trying to fill the other union's needs on an emergency basis. He calls people who he believes are available and can report to the job on short notice, and he is not obligated to follow the hiring hall rules or call workers in order of seniority.

<sup>8</sup> As of August, 2007, the only tests administered were those for apprentices.

evaluations, the R & E Committee reviews them and determines whether the referent is qualified to continue being maintained on the list and receive further calls or should be dropped from the list.

Buckland testified that if a stagehand claimed to have skills as a carpenter, electrician, sound person, lifter or rigger, he would not accept that representation and automatically refer him to such a task. He stated that his evaluation of the applicant's experience was the same as before the rules were adopted. Thus, based on his 24 years of experience and familiarity with "everyone's" skills and abilities, he decides who possesses the skills needed for the various jobs, supported by references from department heads and shop stewards. In addition, he would assign the employee to a "minimal" job under supervision. If he "passed muster" with the head or lead rigger Buckland would be so informed. However, Buckland's pre-trial affidavit stated that a referent who claims to be skilled as a rigger, etc., "will be deemed to have those skills unless he or she demonstrates after being referred to a job as not having them."

### 1. Placement on the Call list

Buckland stated that referents could learn their placement on the call list by visiting the Union office and looking at a copy, or by asking him or the shop stewards, or by "word of mouth" inasmuch as such information is disseminated very quickly through the ranks because of its importance to the workers' lives. He noted that the existence of the list is well known to employees since it is mentioned at all of the Union meetings. Buckland noted that he would not publish or place online the call list containing phone numbers of the referents since that would violate the employees' privacy. He stated that three workers questioned him about their places on the list and he answered those inquiries. It should be noted that the rules state that anyone can dispute his place on the list by providing the business agent with proof of his date of hire, such as a paycheck.

### 2. Access to the Union's Hiring Hall Rules

The Union's website is accessible to the general public. However, its hiring hall rules are not. Union president Cerullo stated that after the ratification of the rules in May, 2007, copies of the rules were posted at the Union hall, distributed at several Union meetings at which the specifics of the rules were explained and discussed, and she also distributed them to members and posted them in the Union hall. She also brought copies of the rules to her worksites and gave them to members and nonmembers and explained the rules' provisions and answered any questions posed.

A copy of the rules was placed on the Local 84 website in May, 2007 until early August, 2007 when it was removed because of "membership concern about the general public having access" to the rules. But Cerullo stated that the rules are still available in two separate sections of the Union's website. One section is for Local 84 members which is accessible with a password. The other is accessible to nonmembers with a password that they can obtain from Local 84. She stated that nonmembers are advised of their ability to access the Local 84 website and are given passwords when they contact the Local 84 office when they seek referrals. Otherwise, they would only know "by word of mouth" that the password was available at the Union office.<sup>9</sup> Buckland noted that a stagehand new to the area would not be privy to the work rules unless he was referred.

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<sup>9</sup> Affidavit of Stella Cerullo, GC Exhibit 9.



Foti stated that he was not aware that the work rules were posted on the internet for everyone to see. He was not given a password for access to the work rules on the internet, and he did not recall attending a meeting at which a password was discussed.

### 3. Calling-In Requirements

The hiring hall rules, adopted in May, 2007, state that “availability is acquired on a week to week basis. If referents are available for work or want to work they *must* call in to the office every Friday... and leave a message as to when they are able to commit to work the following week...” (emphasis in original). Buckland testified that in August, 2007 that rule was not being enforced and 75% of the workforce did not observe it. In early 2008, the Union’s executive board decided that since people were not calling in, that rule would be eliminated, with the change noted on the Union’s website. Instead referrals would be made simply by calling people on the list in the order that they are listed.

### Analysis and Discussion

In *Vaca v. Sipes*, 386 U.S. 171 (1967), the Supreme Court held that a union breaches its duty of fair representation by conduct toward a member of the collective-bargaining unit that is “arbitrary, discriminatory, or in bad faith.” 386 U.S. at 190. In *Air Line Pilots Assn. v. O’Neill*, 499 U.S. 65, 77 (1991), the Court held that the duty of fair representation applies to hiring hall operations. In the operation of a hiring hall “the union’s distinct role as both employer and bargaining representative carries a special obligation to exercise power fairly.” *Jacoby v. NLRB*, 325 F.3<sup>rd</sup> 301, 304 (D.C. Cir. 2003). “The Union’s tremendous authority and the workers’ utter dependence create a fiduciary duty on the part of the union not to conduct itself in an arbitrary, invidious, or discriminatory manner when representing those who seek to be referred out for employment by it.” *Boilermakers Local 374 v. NLRB*, 852 F.2<sup>nd</sup> 1353, 1358 (D.C. Cir. 1988); *Teamsters Local 519 (Rust Engineering)*, 276 NLRB 898, 908 (1985).

#### I. Operation of the Hiring Hall From January, 2005 to May, 2007

The complaint alleges that from January 12, 2005 to about May, 2007, the Respondent operated its exclusive hiring hall (a) without the use of objective criteria in referring applicants for employment and without readily ascertainable rules and procedures that are known to applicants and (b) in a manner that favored employees who were members of the Respondent over employees who were not members of the Respondent.

The Union had no written hiring hall rules. In the absence of a contractual requirement, there is no requirement in Board law that referral rules be written or posted. “However, the Board requires that referrals, whether made pursuant to written or unwritten rules, be based on objective criteria.” *Iron Workers Local 505 (Snelson-Anvil)*, 275 NLRB 1113, 1113 (1985). *Longshoremen ILA Local 20 (Ryan-Walsh Stevedoring Co.)*, 323 NLRB 1115, 1118 (1997).

Prior to January, 2005, Buckland referred workers using a list which separated Union members from nonmembers. He first referred Union members to work and then nonmembers. No non-union referents were sent to work before the entire list of members was exhausted. This procedure resulted in Union members being repeatedly referred to work before the nonmember list was reached.

The Respondent's brief states that "it is true that from January 12, 2005 to May, 2007, Local 84 did not have readily ascertainable rules and procedures known to applicants... It is true that from January 12, 2005 until October 1, 2005, Local 84 did have a hiring hall that favored members over nonmembers."<sup>10</sup>

5 The evidence is clear that prior to January, 2005, the Respondent operated its exclusive hiring hall in a manner that favored employees who were members of the Respondent over nonmembers. Inasmuch as I have found, above, that with the rejection by the membership of the hiring hall rules adopted by the executive board, referrals continued to be made in an unlawful manner – referrals to Union members before non-union personnel.

10 In addition, I find that the Union's business agent could not have made proper referrals by date of hire from January, 2005 to May, 2007 since no proper, integrated list existed prior to May, 2007. I accordingly find that the Union continued to operate its hiring hall in the same unlawful manner as it had prior to April, 2005 by making referrals in that period of time pursuant to which Union members were referred prior to those who were not members of the Union.

15 Since the Respondent favored members over nonmembers from January, 2005 to May, 2007, it did not use objective criteria in referring applicants for employment. In addition, as admitted by the Respondent, during that period of time it did not have readily ascertainable rules and procedures that were known to applicants.

20 I accordingly find and conclude that, as alleged in the complaint, the Respondent, from January, 2005 to May, 2007, operated its exclusive hiring hall without the use of objective criteria in referring applicants for employment and without readily ascertainable rules and procedures that are known to applicants, and in a manner that favored employees who were members of the Respondent over employees who were not members of the Respondent.

## II. Operation of the Hiring Hall from May, 2007 to the Present

30 As set forth above, in May, 2007, the Union adopted hiring hall rules and implemented a new call list which properly listed referents by date of hire or initiation into the Union. The list is properly integrated with no distinction or differing placement between members of the Union and nonmembers. Accordingly, the complaint does not allege that the call list is improper or that the Respondent referred members ahead of nonmembers from May, 2007 to the present.

35 However, the complaint alleges that in violation of the Act, in about May, 2007, the Respondent (a) implemented rules and procedures governing the operation of its exclusive hiring hall and (b) since May, 2007, operated its exclusive hiring hall by (i) failing to follow published rules and procedures without proper notice to those utilizing or seeking to utilize the hiring hall (ii) failing to properly publicize the rules and procedures to those utilizing or seeking to utilize the hiring hall, and (iii) failing to use objective criteria in referring applicants for employment.

### A. Failure to Follow Published Rules and Procedures

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 50 <sup>10</sup> The brief concludes that as of the time of its writing, October 6, 2008, Local 84 had readily ascertainable rules and procedures known to applicants and it does not favor members over nonmembers.

The rules require that referents call in for work each Friday so that the Union is advised of their availability. As set forth above, since referents were not following the rule and the rule was not enforced, the Union decided to eliminate it, and according to Buckland the change was noted on the Union's website. No evidence was offered that the rule was removed from the Union's website although Buckland gave uncontradicted testimony that it was. Nor was there evidence that this change was communicated to all referents or that its written rules were amended to eliminate the calling-in requirement.

The General Counsel argues that the rules' mention that the referent is placed on one or more lists, wardrobe, projection, and stagehand, is misleading since there is only one list used by the business agent in making referrals.

In *Electrical Workers IBEW Local 11 (Los Angeles NECA)*, 270 NLRB 424, 426 (1984), the Board held that the union's failure to give timely notice of a "substantial change in its referral procedures was arbitrary and in breach of its duty to keep applicants informed about matters critical to their employment status." The change was that 4,000 hours of work and not 2,000 was required to obtain preferred referral status. A union must make a "good-faith effort to give timely notice of [a] rule change in a manner reasonably calculated to reach all those who used the exclusive hiring hall." *Plumbers Local 230*, 293 NLRB 315, 316 (1989).

"Any departure from established exclusive hiring hall procedures which results in a denial of employment to an applicant falls within that class of discrimination which inherently encourages union membership, breaches the duty of fair representation owed to all hiring hall users, and violates Section 8(b)(1)(A) and (2) of the Act, unless the union demonstrates that its interference with employment was pursuant to a valid union-security clause or was necessary to the effective performance of its representative function." *Operating Engineers Local 406*, 262 NLRB 5, 51 (1982). There has been no showing here that any of the changes mentioned in this section were made pursuant to a union-security clause or were necessary to the effective performance of the Union's representative function.

In *Teamsters Local 519 (Rust Engineering)*, 276 NLRB 898, 908 (1985), the Board found that the union's failure to notify all users of the hiring hall of the significant change in its referral procedure requiring that referral cards be initialed or signed in order to be updated, violated the Act.

I find that the Union's amendment of its rules to eliminate the requirement set forth in its rules that employees call in for work every Friday is a significant change in an established rule. Employees who continue to believe that they have to call in for work each week may mistakenly be under the impression that by failing to call in they will lose their right to obtain referrals. Inasmuch as there was no evidence that the change was properly disseminated to all referents in such a way as to ensure that such referents were aware of the changed rule, the Union has unlawfully failed to follow its published rules without proper notice to those utilizing it or seeking to utilize it, as alleged in the complaint.

In addition, the rules state that "a referent is put on one or more lists (wardrobe, projection, and stagehand)" according to date of hire. In fact, as Buckland testified, there is only one integrated list with no separation by type of work performed. It is true that when a person with particular skills is required, the rules properly permit the business agent to refer the "next individual with those demonstrated skills." In the operation of the referral system, the business agent may properly skip over those referents not having the particular skill required and instead refer the next person having those skills.

Although in practice the agent technically may utilize “one or more ‘lists’” in making this determination, in reality there is only one physical list. The rules’ mention of “one or more lists” may mislead the referent into believing that he must be classified on a particular list in order to be referred, and if not, his chances of referral are limited. That is not the case.

I accordingly find and conclude that the statement in the rules that the referent “is put on one or more lists” is a departure from the actual operation of the referral rules and violates the Act.

### **B. Failing to Properly Publicize its Rules**

As set forth above, internet access to the hiring hall rules is restricted to those who have been referred by the Union and have received a password given by the Union. In addition, a stagehand new to the area would not be privy to the work rules unless he was referred. The rules are accessible to members and nonmembers through a password obtainable from the Union, but nonmembers would only know through “word of mouth” that the password was available from the Union office.<sup>11</sup>

A union has a “statutory duty to give applicants for employment adequate notice of its hiring hall procedures.” *Electrical Workers Local 11*, above. I do not believe that the method currently in place gives applicants adequate notice of the hiring hall rules. Currently they are only available to a nonmember or someone who had not been referred through a password obtainable from the Union which that person would learn about through word of mouth. This practice violates the Act.

### **C. Failing to Use Objective Criteria**

As set forth above, the rules have an elaborate, detailed and lengthy procedure pursuant to which the referent who claims to be skilled in a department may demonstrate those skills or take a test and be evaluated. Buckland, however, testifying at odds with such a procedure, stated that he determines if the referent has such skills based on his 24 years of experience and reports from heads of departments and shop stewards.

In *Polis Wallcovering Co.*, 262 NLRB 1336, 1338-1339 (1982), the Board found that the business manager relied on his subjective experience regarding the qualifications of applicants whom he knew, thereby creating the possibility that qualified nonmembers might be arbitrarily disadvantaged since the manager did not know their qualifications and therefore would not refer them. The Board held that the union violated Section 8(b)(1)(A) by failing to rely on objective criteria. It is particularly significant that in *Polis* the Board noted that the business manager made the determination concerning the skills of the referents without the use of such objective factors or measurable criteria such as “tests” or “examinations.”

Here, tests are available as set forth in the rules while Buckland determined, on his own, the skills of the referents based on his own knowledge. Buckland stated that inasmuch as he had 24 years experience in the industry and was “fairly familiar with everyone’s skills and abilities,” he was qualified to assess their skills. However, as in *Polis*, certain nonmembers whose qualifications were unknown to Buckland may be unfairly disadvantaged by his refusal to

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<sup>11</sup> Affidavit of Stella Cerullo, GC Exhibit 9.

refer them since he was unfamiliar with their qualifications, and his apparent failure to utilize the rules' testing procedure.

“A union commits an unfair labor practice if it administers the exclusive hall arbitrarily or without reference to objective criteria and thereby affects the employment status of those it is expected to represent.” *Stage Employees IATSE Local 592 (Saratoga Performing Arts Center)*, 266 NLRB 703, 709 (1983).

The Board has found violative a business agent's exercise of “unfettered discretion in making referrals” through subjective determinations as to experience, skills and ability, and assessing an employee's qualifications by observation or word of mouth from others. Such a determination lacks objective criteria. *Stage Employees IATSE Local 7*, 339 NLRB 214, 219 (2003). “A union commits an unfair labor practice if it administers an exclusive hiring hall arbitrarily or without reference to objective criteria, even absent a showing of animus against nonmembers.” *Stagehands Referral Service*, 347 NLRB at 1170.

Here, Buckland apparently ignored the hiring hall rules' elaborate testing procedure for new referents and instead substituted his own judgment in assessing their skills. Such a practice does not constitute the objective criteria required by the Act.

I accordingly find and conclude that the Union, as alleged failed to use objective criteria in referring applicants for employment.

### Conclusions of Law

1. By operating its exclusive hiring hall from January 12, 2005 to May, 2007 without the use of objective criteria in referring applicants for employment, and without readily ascertainable rules and procedures that are known to applicants, the Respondent International Alliance of Theatrical & Stage Employees & Motion Picture Technicians of the United States & Canada, Local 84, AFL-CIO has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act.

2. By operating its exclusive hiring hall from January 12, 2005 to May, 2007 in a manner that favored employees who were members of Local 84 over employees who were not members of Local 84, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act.

3. By since about May, 2007, operating its exclusive hiring hall by failing to follow published rules and procedures without proper notice to those utilizing or seeking to utilize the hiring hall, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act.

4. By since about May, 2007, failing to properly publicize its rules and procedures to those utilizing or seeking to utilize its hiring hall, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act.

5. By since about May, 2007, failing to use objective criteria in referring applicants for employment, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act.

### **The Remedy**

5 Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I will recommend that the Union operate its hiring hall in a nondiscriminatory manner. In order to ensure that members and nonmembers and prospective referents are aware of the hiring hall rules I will recommend that the Respondent mail to the last  
10 known address of all members and applicants for employment who have utilized the hiring hall since January 12, 2005, a complete written copy of its Job Referral Rules, and place the Rules and the call list in a public place at the hiring hall for easy access during business hours and freely allow members and other applicants for referral to inspect such records. In addition I will  
15 recommend that the Respondent provide a copy of the Job Referral Rules to all individuals who seek to be referred to employment by Local 84 in the future, and publish its Job Referral Rules on its website in a manner accessible to the general public.

20 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>12</sup>

### **ORDER**

25 The Respondent, International Alliance of Theatrical & Stage Employees & Motion Picture Technicians of the United States & Canada, Local 84, AFL-CIO, Hartford, CT, its officers, agents, and representatives, shall

#### **1. Cease and desist from**

30 (a) Operating its exclusive hiring hall in a discriminatory manner that favors employees who are members of Local 84 over employees who are not members of Local 84.

35 (b) Operating its exclusive hiring hall without the use of objective criteria in referring applicants for employment, and without readily ascertainable rules and procedures that are known to applicants

(c) Operating its hiring hall by making referrals in a manner that deviates from its Job Referral Rules.

40 (d) Changing and failing to follow its published rules and procedures set forth in its Job Referral Rules without giving adequate and timely notice to its members and other applicants for referral.

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12 If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed  
50 waived for all purposes.

(e) Failing to use objective criteria in making referrals for employment through its exclusive hiring hall.

(f) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Operate its exclusive hiring hall in a nondiscriminatory manner.

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(b) Select and refer applicants for employment without discrimination against those applicants by reason of their membership or nonmembership in the Union.

(c) Operate its hiring hall in the manner described in its Job Referral Rules and in accordance with objective criteria.

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(d) Place the Job Referral Rules and the call list in a public place at the hiring hall for easy access during business hours and freely allow members and other applicants for referral to inspect such records.

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(e) Mail to the last known address of all members and applicants for employment who have utilized the hiring hall since January 12, 2005, a complete written copy of its Job Referral Rules.

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(f) Provide a copy of the Job Referral Rules to all individuals who seek to be referred to employment by Local 84 in the future.

(g) Publish its Job Referral Rules on its website in a manner accessible to the general public.

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(h) Within 14 days after service by the Region, mail copies of the attached notice marked Appendix,<sup>13</sup> at its own expense, to all members and to all individuals who have sought referrals for employment from its exclusive hiring hall, whether or not they have received such a referral, since January 12, 2005.

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<sup>13</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., January 7, 2009.

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Steven Davis  
Administrative Law Judge

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APPENDIX

NOTICE TO MEMBERS

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain on your behalf with your employer  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

WE WILL NOT operate our exclusive hiring hall without the use of objective criteria in referring applicants for employment, and without readily ascertainable rules and procedures that are known to applicants.

WE WILL NOT operate our exclusive hiring hall in a manner that favors employees who are members of International Alliance of Theatrical & Stage Employees & Motion Picture Technicians of the United States & Canada, Local 84, over employees who are not members of Local 84.

WE WILL NOT operate our exclusive hiring hall by failing to follow published rules and procedures without proper notice to those utilizing or seeking to utilize the hiring hall.

WE WILL NOT fail to properly publicize the hiring hall rules and procedures to those utilizing or seeking to utilize the hiring hall.

WE WILL NOT fail to use objective criteria in referring applicants for employment.

WE WILL NOT operate our exclusive hiring hall in a discriminatory manner.

WE WILL NOT operate our exclusive hiring hall by making referrals in a manner that deviates from our Job Referral Rules.

WE WILL NOT orally change our Job Referral Rules without giving adequate and timely notice to our members and other applicants for referral.

WE WILL NOT fail to use objective, consistent standards in making referrals for employment through our exclusive hiring hall.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL operate our exclusive hiring hall in a nondiscriminatory manner.

WE WILL select and refer applicants for employment without discrimination against those applicants by reason of membership or nonmembership in the Union.

WE WILL mail to their last known address a complete written copy of our Job Referral Rules to all members and applicants for employment who have utilized the hiring hall since January 12, 2005.

WE WILL place the Job Referral Rules and the call list in a public place at the hiring hall for easy access during business hours and WE WILL freely allow members and other applicants for referral to inspect such records.

WE WILL operate our hiring hall in the manner described in our Job Referral Rules and in accordance with objective criteria.

WE WILL within 14 days after service by the Region, mail copies of this Appendix at our own expense, to all members to all individuals who have sought referrals for employment from its exclusive hiring hall, whether or not they have received such a referral, since January 12, 2005.

WE WILL provide a copy of the Job Referral Rules to all individuals who seek to be referred to employment through our exclusive hiring hall in the future.

WE WILL publish our Job Referral Rules on our website in a manner accessible to the general public.

INTERNATIONAL ALLIANCE OF THEATRICAL &  
STAGE EMPLOYEES & MOTION PICTURE  
TECHNICIANS OF THE UNITED STATES &  
CANADA, LOCAL 84, AFL-CIO

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(Labor Organization)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

280 Trumbull Street, 21st Floor  
Hartford, Connecticut 06103-3503  
Hours: 8:30 a.m. to 5 p.m.  
860-240-3522.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3528.